

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION NO.1853 OF 2005

Suresh Chandra Shukla

Petitioner

vs.

1. Union of India & 3 ors.

Respondents

Mr.G.K.Masand with Ms.Ritu Singh for the petitioner.

Mr.Suresh Kumar for the respondents.

**CORAM : F.I.REBELLO &
ANOOP V. MOHTA,JJ.**

DATED : 19th September, 2006

P.C.

Rule. Heard forthwith.

2. The petitioner had approached Central Administrative Tribunal (CAT) by Original Application No.782/2004 as he was reverted by order dated 8th November, 2004 from Group "B" post of Assistant Operation Manager (for short, "AOM") to Group "C" post of Chief Train Controller in the grade of Rs.6500-10500 with immediate effect. Due to pending criminal case, promotion to Group "B" should be deemed to be kept in the sealed cover, till the outcome of the criminal prosecution. It appears that the petitioner was active member and office bearer of Western Railway Mazdoor Sangh (WRMS, for short). In or about 1995 internal disputes arose

between the working of the WRMS. The petitioner herein along with some other employees opposed the continuation of retired employees of Governing Body of WRMS and took a decision not to allow the retired Railway employees to represent the WRMS before reviewing authorities. The then office bearers advised the General Manager to delete the name of the petitioner from the list of office bearers of WRMS. They had also advised the Bank to freeze the Bank account and not to permit the petitioner and others to operate the said Bank account. Civil proceedings were to be initiated which need not be adverted to in view of the order to be passed. The retired employees filed private complaint before the Court of Magistrate at Kota which was referred to the Police authorities for enquiry under Section 156 of the Code of Criminal Procedure who treated the private complaint as First Information Report No.231/1996 dated 19.9.1996. The petitioner was promoted to the post of Deputy Chief Controller in the grade of Rs.6500-10500 in October 1984 and to the post of Chief Train Controller in or about 1990-91. Whilst working as Chief Train Controller he was selected along with five others to the post of AOM which is a grade "B" post and was posted at Churchgate. Subsequently, by a show cause notice, the petitioner was reverted by order dated 6.4.2004. The learned Tribunal, after considering the various contentions as also the Railway Board Circular

No.13/1993 and relied upon the same and found that the petitioner was promoted on account of information given by DRM that no disciplinary or vigilance case against the applicant is pending vide letter dated 5.12.2002 and that the respondents came to know about the criminal proceedings after show cause notice, they have reverted the petitioner. The learned Tribunal found that there was no illegality and infirmity with the order and consequently dismissed the Original Application against which the present petition.

3. We have considered the relevant rule 5 of the Railway Board's Order. Rule 5 sets out that in those cases where criminal prosecution against the Railway servant is not concluded even after the expiry of two years from the date of the original selection/formation of suitability list, the promoting authority may review the case of the Railway servant concerned, provided he is not under suspension to consider the desirability of giving him adhoc promotion keeping in view what is set out therein. Our attention is also invited to the advise tendered to the General Manager by the Law Officer which reads as under:

"Mere lodging of FIR does not constitute a case in the Court of law. If a chargesheet is filed and case is under trial, the case not being connected with the employees working in the Railway, there is no legal objection to promote him if it is not against the public

interest."

This has been adverted as according to the learned counsel, the Secretary, who has been charged along with the petitioner in his case, his promotion has not been withheld. Similarly it has been pointed out that in so far as the complaint is concerned, there was a private complaint against him and during the pendency of the private complaint, the said complainant has also been promoted. In other words, what the learned counsel submits is that action of the respondents is arbitrary in treating the petitioner differently from the Secretary of the same Union and chargesheeted person and the complainant on whose complaint the case was investigated.

4. We do not propose to answer various issues considering the order to be passed. We find as referred to in rule 5 that the period of two years expired and the criminal prosecution is not completed, it is open to the Promoting Authority to review the case of the Railway servant. The period of two years is also over and as such it will be open to the Promoting Authority to review the case of the petitioner based on rule 5 of the Railway Board's Order, 1993. As we have indicated earlier the case against the petitioner is not on account of any act of his as an officer of the Railways,

but is an act unconnected with his official duties. The matter pertains to Union activities. This necessarily will be borne in mind by the Promoting Authority while considering the case of the petitioner and more so what we have set out earlier regarding the promotion of the co-accused who has been chargesheeted as also the complainant based on whose complaint action has been taken against the petitioner herein. In so far as the merit is concerned, the Selection Committee had found the petitioner fit for selection and had selected him. We see no reason as to why the case of the petitioner considering his long service should not be considered by the Promoting Authority sympathetically and considering what we have set out in the order to be passed.

5. In the light of that, the following order:

- (1) The impugned order is set aside and the following directions are issued:

- (a) The petitioner to continue to hold the post and draw salary till such time the case of the petitioner is reviewed by the Promoting Authority.
- (b) The Promoting Authority, considering the case of the petitioner for appointment as

and by way of adhoc promotion pass an appropriate order according to law. If the order is adverse, the same not to be given effect for a period of six weeks from the date of the communication of the order to the petitioner.

(c) In so far as the selection already done, that would be kept in a sealed cover and that would be subject to the order passed in the criminal proceedings.

6. Rule made absolute accordingly. There shall be no order as to costs.

(F.I. REBELLO, J.)

(ANOOP V. MOHTA,J.)